

1994 WL 703272 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 2, 1994

*1 The Honorable Frank Jones
Mayor, Town of Sellers
Post Office Box 116
Sellers, South Carolina 29592

Dear Mayor Jones:

Thank you for your letter of October 26, 1994, to Attorney General Medlock, which he has referred to the Opinion Section for response. You had inquired as to whether you could serve simultaneously as mayor of the Town of Sellers and also as a code enforcement officer or public officer or chief, one concern being dual office holding.

Article XVII, Section 1A of the state Constitution provides that "no person may hold two offices of honor or profit at the same time ...," with exceptions specified for an officer in the militia, member of a lawfully and regularly organized fire department, constable, or a notary public. For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. *Sanders v. Belue*, 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. *State v. Crenshaw*, 274 S.C. 475, 266 S.E.2d 61 (1980).

It is beyond argument that a mayor would be considered an office holder. See Ops. Att'y Gen. dated March 31, 1987; February 25, 1992; July 28, 1993; and many more. Likewise, a police officer or chief is considered an office holder. *State v. Crenshaw*, *supra*. This Office has advised previously that an individual may not serve simultaneously as a mayor and police officer due to the dual office prohibitions of the State Constitution. See Ops. Att'y Gen. dated June 11, 1974 and April 23, 1979. In addition, S.C.Code Ann. § 5-7-180 (1976), a copy of which is enclosed, would prohibit a mayor or council member from holding other municipal office or employment during the term for which he was elected.

This Office has not considered whether a code enforcement officer would be considered an office holder. Regardless of the outcome of that question, § 5-7-180 would still prohibit a mayor or council member from holding other municipal office or employment during the term for which he was elected.

I am not aware of any provision of the Code of Laws which would assign ex officio duties of law enforcement or code enforcement to a mayor or council member.

Thus, I must advise that a mayor or council member would be prohibited from serving as a police officer, police chief, or code enforcement officer during the term for which he was elected, due to the applicable statutory and constitutional prohibitions discussed above. Today's opinion is consistent with advice provided to you by letter of October 26, 1992, a copy of which is enclosed.

Sincerely,

Patricia D. Petway
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions

1994 WL 703272 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.